S.B. Civil Misc. Appeal No.3135/05

Suja Ram & Ors.

Vs.

Rajesh Kumar Sharma & Ors.

Date of Judgment : 11/08/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Jitendra Mitruka, for appellants

This appeal has been filed with the delay of 15 days, but I have considered to examine the case on merits as well.

Instant appeal has been filed by the husband and three minor children of deceased Smt. Mooli Devi seeking enhancement of compensation awarded by the Tribunal vide award dated 1st August, 2005.

As alleged in the claim petition the deceased Smt. Mooli Devi aged 40 yrs. died in an accident on 23rd September, 2003 and her earning was Rs.4,000/- per month.

Since there was no material came forward in support of income of the deceased, the learned Tribunal on the basis of its guess work considered Rs.1500/- as income of the deceased and after deducting 1/3 for her personal expenses, Rs.1000/- was considered for providing financial assistance to the family and with the aid of multiplier of 15 awarded total compensation of Rs.2,10,000/- to the claimants under the impugned award.

Counsel for appellants submits that so far as the income of the deceased is concerned, there was no contrary material placed on record other than what was deposed by the claimants in support of

their claim petition. As a consequence whereof, the income which has been determined by the Tribunal is based on hypothetical consideration and not supported by material on record, which requires interference by this court.

I have considered the submission made by the counsel and also perused the impugned award.

The claimants in their claim petition alleged that the income of the deceased was Rs.4,000/- on selling vegetables, but no material was placed on record in its support and which has been specifically referred to by the Tribunal in Para 15 of the impugned award. On the said premise, the Tribunal considered what was paid in the ordinary course under the Minimum Wages Act and considered Rs.1500/- as her income and which is based on its guess work and after deducting 1/3 for her personal expenses, Rs.1000/- was considered for providing financial assistance to the family and consequently passed award with the aid of multiplier of 15.

So far as the income assessed by the Tribunal is concerned, is based on material placed by either of the parties and what has been finally awarded, in my opinion, is just and does not require interference by this court.

Consequently, the appeal is dismissed apart from delay on merits as well.

[Ajay Rastogi],J.

FRB